

Serial No. 09/537,654  
Group Art Unit: 1638

### REMARKS

Entry of the amendment after final and reconsideration of the present application is respectfully requested. Claims 2-10, 12, 25, and 28-34 are pending after the amendment. Claims 1, 11, 13-24, 26-27, and 35 have been cancelled. Applicants reserve the right to pursue the content of these claims in a continuing application. Claims 3, 4, 8, 9, 12, 25, 29, 30, and 34 have been amended. Claims 3, 4, 9, 29, and 30 have been amended to correct claim dependencies in light of the current amendment. Claims 3, 4, 8, 29, 30, and 34 have been amended to recite "the polynucleotide" rather than "the recombinant expression cassette". Claims 12 and 25 have been amended and are now equivalent to cancelled claims 17 and 27 respectively. Support for the amendments is found in the claims as originally filed, and throughout the specification. No new matter has been added.

#### Rejections under 35 U.S.C. §112, 1<sup>st</sup> Paragraph, Enablement:

Claims 2-10, 12, 14, 16, 18-26, and 28-35 are rejected under 35 U.S.C. §112, first paragraph.

The action indicates that the specification is enabling for nucleic acids of SEQ ID NO: 1 or that encode SEQ ID NO: 2. Claims 12 and 25 have been amended to recite the nucleic acid of SEQ ID NO: 1, and a nucleic acid that encodes SEQ ID NO: 2, respectively. Claims 3, 4, 9, 29, and 30 have been amended to correct claim dependencies in light of the current amendment. Claims 3, 4, 8, 29, 30, and 34 have been amended to recite "the polynucleotide" rather than "the recombinant expression cassette". Claims 2-10, 12, 25, and 28-34 are pending after the amendment. The amendment obviates the rejection. Applicants respectfully request that the rejection under 35 U.S.C. §112, first paragraph, enablement be withdrawn.

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**Rejections under 35 U.S.C. §112, 1<sup>st</sup> Paragraph, Written Description:**

Claims 2-10, 12, 14, 16, 18-28 and 28-34 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter not sufficiently described in the specification to indicate the inventor(s) had possession of the invention.

As noted above, claims 12 and 25 have been amended to recite the nucleic acid of SEQ ID NO: 1, and a nucleic acid that encodes SEQ ID NO: 2, respectively. Claims 3, 4, 9, 29, and 30 have been amended to correct claim dependencies in light of the current amendment. Claims 3, 4, 8, 29, 30, and 34 have been amended to recite "the polynucleotide" rather than "the recombinant expression cassette". Claims 2-10, 12, 25, and 28-34 are pending after the amendment. The amendment obviates the rejection, Applicants respectfully request that the rejection under 35 U.S.C. §112, first paragraph, written description be withdrawn.

**Rejections under 35 U.S.C. §112, 2<sup>nd</sup> Paragraph:**

Claims 2-10, 12, 14, and 16-34 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The rejection is repeated for the reasons of record set forth in the Office Actions mailed 2/5/03 as applied to claims 2-10, 12, and 14-35.

Claim 14 has been cancelled, thereby obviating the rejection. Claims 12 and 25 have been amended as noted above, and further have been amended to delete the recitation "polypeptide involved in DNA double strand break repair", thereby obviating the rejection. Claims 2-10, 12, 25, and 28-34 are pending after the current amendment. Applicants believe the current amendment obviates all rejections under 35 U.S.C. §112, second paragraph, and therefore respectfully request that the rejection be withdrawn.

**Rejections under 35 U.S.C. §102:**

Claim 14 is rejected under 35 U.S.C. §102(a) as being anticipated by NCI-CGAP (GenBank Accession No. AI184177). The rejection is repeated for the reasons of record.

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Claim 14 has been cancelled in the current amendment, thereby obviating the rejection under 35 U.S.C. §102(a).

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### CONCLUSION

In light of the foregoing remarks and amendments, it is believed that pending claims 2-10, 12, 25, and 28-34 are in condition for allowance. Therefore entry of the amendment, withdrawal of the outstanding rejections and allowance of all of the remaining claims is respectfully requested. Applicants reserve the right to pursue Applicants reserve the right to pursue the content of the cancelled claims in a continuing application. The Examiner is invited to telephone the Applicant if this would expedite the prosecution and allowance of the instant application.

Respectfully submitted,



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